

Before The Honorable Richard Seeborg, Judge

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
VS.) **NO. CR 20-00249 RS**
)
ROWLAND MARCUS ANDRADE,)
)
Defendant.)
)

San Francisco, California
Wednesday, August 7, 2024

TRANSCRIPT OF VIDEOCONFERENCE PROCEEDINGS

APPEARANCES: (via videoconference)

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(APPEARANCES CONTINUED ON THE FOLLOWING PAGE)

Remotely Reported: Marla F. Knox, CSR No. 14421, RPR, CRR, RMR
U.S. District Court - Official Reporter

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Wednesday - August 7, 2024

2:29 p.m.

P R O C E E D I N G S

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THE CLERK: Calling case 20-CR-249, United States versus Rowland Marcus Andrade.

Counsel, please state your appearances starting with the Government.

MR. WARD: Good afternoon, Your Honor, it's David Ward for the United States. I'm joined by my colleagues Chris Highsmith and Matthew Chou from the U.S. Attorney's office here in San Francisco.

Also joining us is Chantelle Dial. Ms. Dial is a DOJ attorney with the National Security Division, and she is here to help advise the Court on the CIPA notice and the upcoming CIPA procedures.

THE COURT: Good afternoon.

MR. SHEPARD: Good afternoon, Your Honor, Michael Shepard for the Defendant, Rowland Marcus Andrade. He is present by Zoom and consents to proceed in that fashion and appreciates the Court's accommodation to let him do so.

With me are my colleagues, Kerrie Dent and Cindy Diamond.

THE COURT: Good afternoon.

So, this is on calendar to deal with the classified information issues. I dealt with similar issues once before, but I don't have a great deal of experience with CIPA.

1 So, why don't I start with you, Mr. Ward. Tell me, you
2 know, what this is all about, what I need to know.

3 **MR. WARD:** Your Honor, I would respectfully turn this
4 over to Ms. Dial. We have filed a notice that we have
5 identified certain classified information and that we would ask
6 the Court to review. But beyond that, I think Ms. Dial is best
7 positioned to advise the Court.

8 **THE COURT:** Okay. Go ahead.

9 **MS. DIAL:** Good afternoon, Your Honor.

10 So, as the Court has seen the Government's Section 2, the
11 purposes of the Section 2 pretrial conference are to set a
12 schedule, to seek a CISO or Court Information Security Officer
13 to address any clearances.

14 The Government provided a proposed schedule. I understand
15 Defense Counsel has objected to that.

16 We are proposing that the Government's Section 4 motion --
17 CIPA Section 4 motion to the Court be submitted on
18 October 25th.

19 I can say in speaking to the AUSAs, I'm aware of the trial
20 date in this matter. I'm aware that the trial date needs to
21 stick. My supervisors are. The entity holder of the
22 classified information is, and we intend to stay within the
23 confines of the Court's current schedule.

24 **THE COURT:** From the Government's perspective, does
25 this all lead to -- if I agree or am comfortable with doing it

1 the way you proposed, this leads to -- culminates in my review
2 of material? Is that what happens in this instance?

3 **MS. DIAL:** Yes. And I have in front of me the things
4 that I am allowed to say and the things that I am not allowed
5 to say. There's a lot I can't say right now.

6 But what happens is in the Section 4, the Government will
7 provide a thorough background on what classified information
8 there is.

9 I can say that there is a limited universe of information.
10 We don't expect that there will be any litigation necessary
11 after the Section 4 and that will all be thoroughly explained
12 in the Section 4 filing.

13 **THE COURT:** Which is under seal to me?

14 **MS. DIAL:** Yes, it is, Your Honor.

15 **THE COURT:** Okay.

16 (Pause in proceedings.)

17 **THE COURT:** Okay. All right. Mr. Shepard, what's --
18 what is your view on this?

19 **MR. SHEPARD:** So, we had no objection to the
20 Government's original proposed order which said let's start a
21 CIPA procedure and let's appoint a security officer.

22 The Government sent us a proposed scheduling order on
23 July 31st. Asked if we would stipulate to the order. We
24 responded to it. Offered to meet and confer. Provided them
25 with a short letter setting forth several reasons why we

1 couldn't agree starting with the Government giving itself until
2 October 25 for the initial Section 4 filing.

3 And the Government then did not meet and confer with us
4 but posed -- sent their proposed order with the October 25 date
5 to the Court last night.

6 I would submit that the Court should not accept the
7 Government's proposal to allow it until October 25th to make
8 its Section 4 filing.

9 It's not entirely clear to anyone at this point how this
10 will all play out, but my concern is that this is going to
11 squeeze the time the Court needs and the time that we would
12 need to prepare for a February trial. If information is
13 provided to us, we need to get it, review it, follow up on it.

14 If, as sometimes I understand is the case, we would need
15 to get security clearance to seize certain items. That takes a
16 substantial amount of time.

17 And so from my perspective, there is no reason to give the
18 Government until October 25th. Ms. Dial says it's a limited
19 universe of information. We're talking about a hundred days --
20 October 25th would be a hundred days since the Government filed
21 its CIPA motion.

22 It will be two years since we were asking if CIPA
23 procedures needed -- would be needed in response to some of our
24 discovery requests.

25 So, giving the Government until October 25th seems like a

1 mistake to me. I would ask the Court to set a much shorter
2 deadline and that any CIPA schedule should also include
3 reasonable time for Defense Counsel to -- to make an ex parte
4 submission on our theory of the case to help you make the
5 decisions that you need to make in response to the Government's
6 filing.

7 You know, they -- Ms. Dial has said there isn't a lot of
8 classified material, and I think Mr. Ward said that the
9 Government filed a notice with certain classified information.

10 We don't know what this is about, and the Government has
11 given us no information about why CIPA is now needed, what the
12 volume of material is going to be other than what Ms. Dial just
13 said, and the types of data involved including, like, what
14 agency -- what is the issue. We know nothing about it.

15 Makes it hard to say anything other than that we
16 appreciate that we need to go through the CIPA process but not
17 on a schedule which would only serve to reward the Government
18 for delaying the process.

19 **THE COURT:** You know, can't you all pursue further the
20 meet-and-confer process? I mean, you know, it does seem like
21 it's a long period of time particularly in light of the fact
22 that we have gotten some inkling that it is not a great deal of
23 material.

24 But, you know, to ask me to mandate a schedule when I know
25 nothing about what this is all about is -- really makes no

1 sense. You -- the parties need to meet and confer and come up
2 with a schedule.

3 I mean, I don't know the answer to this. It is not
4 written in the stars.

5 So, you know, I totally understand why the Government has
6 to be careful about what it says, but at the same time you
7 can't expect me to just say "we can't tell you anything but
8 trust us, this is the right schedule."

9 The parties have to work together and come up with
10 something that makes sense to both sides and let me -- you
11 know, is there further -- from -- to the Government, because
12 apparently the Government didn't take up the invitation to do
13 further meeting and conferring, I guess my question is why not?

14 **MS. DIAL:** And I think I will -- I know that
15 Mr. Ward -- AUSA Ward can best address that. I would like at
16 some point, Your Honor, to be able to explain a little bit more
17 why we have set October 25th but I can defer --

18 **THE COURT:** Go ahead.

19 **MS. DIAL:** -- to Mr. Ward.

20 **THE COURT:** Who is stopping you? Go ahead. Tell us.

21 **MS. DIAL:** All right. Thank you, Your Honor. So the
22 October 25th -- and to clarify, the Government has not said
23 that it's not a lot of classified information, just that it's a
24 limited universe. I understand we are parsing words, but we --
25 the things that cannot be said --

1 **THE COURT:** I have to tell you, Ms. Dial -- I'm sure
2 you hear this from other people when you have these cases --
3 the difference between a limited universe and not a lot of -- a
4 limited universe but I'm not saying it's not a lot of material
5 leaves me completely in the dark.

6 And I understand why it may be that way, but you can't
7 expect me then to draw any conclusions from what you have just
8 told me because you have essentially said, "I can't tell you
9 anything."

10 Okay. But then I'm not going to draw some conclusion, oh,
11 well, therefore, you are right. October 25th makes sense. I
12 mean, I don't know.

13 **MS. DIAL:** I understand which is why I think I could
14 have done better at the beginning explaining some of the next
15 steps that happen in the process.

16 And I understand and appreciate the Court's frustration.
17 So I am limited in saying the origins of the classified
18 information, who owns the information, the classified level,
19 and how much there is.

20 What I can say is that the U.S. Attorney's Office
21 conferred with CES. We determined that CIPA proceedings were
22 going to be necessary.

23 The reason for the October 25th is not because of the
24 universe of information that we are talking about. It's
25 because of the procedures that have to happen particularly in

1 the Ninth Circuit.

2 So, there is -- and in our -- in our filing we referenced
3 this, but there is a number of steps that the Government now
4 has to take in order to submit its Section 4.

5 So what happens internally here is I draft up the
6 Section 4. I'm currently working with the entity holder of the
7 information; already working with those attorneys. Those
8 attorneys have to draft a summary saying why the information
9 that is at issue here is privileged.

10 That summary has to be signed by the head of the
11 department.

12 **THE COURT:** Okay. Let me stop you. I know there are
13 going to be 85 different steps you have to go through. I
14 understand.

15 Why is this cropping up now? I mean, this case has been
16 going on forever. I want this case out of here, and it's gone
17 on forever.

18 So, now, when we have a trial date, February, you know,
19 that's when it's going to happen. Why now is this all cropping
20 up? Why didn't this happen before?

21 **MS. DIAL:** I --

22 **THE COURT:** Did something new happen that I was
23 unaware of that suddenly creates this whole world of
24 confidential or classified information that we were otherwise
25 unaware of?

1 **MS. DIAL:** I am limited in what I can say. We will
2 explain the timeline entirely in the Section 4 and why it came
3 to light now.

4 **THE COURT:** Okay. Well, let me go to Mr. Ward. Is
5 there -- is there -- is there an opportunity to pursue some
6 further meeting and conferring to come up with a schedule that
7 is going to work for everybody?

8 I mean, Mr. Shepard has specific concerns about the
9 crunching of the schedule in certain ways. And, you know, at
10 the very least, can't you all hash that out?

11 And perhaps your explanation to him will alleviate his --
12 he will then understand why the schedule is the way that it is
13 being proposed.

14 But, otherwise, it effectively is a Government mandate to
15 sign this because this is what we tell you we need. And maybe
16 it's right -- maybe that's true -- but I understand why
17 Mr. Shepard wants some meeting and conferring on this issue.

18 **MR. WARD:** Your Honor, I understand. And we have not
19 had great success with meeting and conferring overall with
20 Mr. Shepard and his colleagues.

21 In this case we will attempt to have further discussion
22 with them.

23 We are severely limited in that many of the questions that
24 he wants answers to -- like, why now, how much is involved,
25 what is the classified information, is just information we

1 can't provide. It's because it's classified.

2 I understand that Mr. Shepard may want the answers to
3 them, but it's not something that we can provide.

4 We are trying to work within the confines of classified
5 information. And as Ms. Dial said, we can present that to the
6 Court.

7 I'm happy to have a discussion in an attempt with
8 Mr. Shepard to compress the schedule. I understand his
9 concern, and I certainly understand the Court's concern and the
10 Government -- it is shared by the Government.

11 We want this off your calendar too. We want this case to
12 go to trial, and we expect this case is going to go to trial on
13 February 10th.

14 We don't expect that this issue will derail it even with
15 the Government's proposed schedule. I'm happy to have a
16 further discussion with Mr. Shepard.

17 As Ms. Dial said, there are approval timelines and
18 presenting the Court with classified information that takes
19 time to work its way up.

20 The Ninth Circuit is particularly strict about the
21 approvals for that. We are working diligently. This is not
22 something that came up --

23 **THE COURT:** When you --

24 **MR. WARD:** -- and we sat on.

25 **THE COURT:** When you say the Ninth Circuit is

1 demanding of this, I'm not sure what you are talking about. Is
2 this case law or what?

3 **MR. WARD:** Yes -- and Ms. Dial can correct me -- but
4 it is a case that Alahmedalabdaloklah, roughly, which sets up a
5 procedure for which level of department head must approve CIPA
6 filings. And in this case it requires a declaration from the
7 political head of the department, which we understand to be --
8 well --

9 **MS. DIAL:** Factually can't --

10 **MR. WARD:** We can't say what department but the --

11 **THE COURT:** Whatever. I don't --

12 **MR. WARD:** We will work through it, Your Honor.

13 **THE COURT:** Yeah.

14 **MR. WARD:** If we can tighten the schedule, we will --
15 I will speak with Ms. Dial. I'm happy to try to accommodate to
16 a point Mr. Shepard. His request was that we file this next
17 week. It's not -- it's not workable.

18 **THE COURT:** It's not workable. I understand. That's
19 fine.

20 **MR. WARD:** But we will --

21 **THE COURT:** Okay. Do make another effort. And I will
22 say to, Mr. Shepard, at the end of the day because of the
23 nature of this and because -- for understandable reasons -- I'm
24 not going to have the full explanation that we would all want,
25 I'm going to have to err on the side of what the Government is

1 proposing.

2 So it is in -- you should be incentivized to try to come
3 up with something that is workable. It may not be perfect from
4 your scheduling perspective; but if it comes down to -- because
5 of the nature of this the -- you know, don't agree to do what
6 the Government wants you to do, I'm going to be in a pretty
7 difficult position because I -- you know, the nature of this
8 stuff.

9 So, it's not your standard just, you know, back-and-forth.
10 They are in a unique position with respect to classified
11 materials, and we just have to recognize that.

12 So, I do want them to try another meet and confer; but I
13 want you to be incentivized to try to come up with some
14 understanding, which may not be a perfect world from your
15 perspective.

16 **MR. SHEPARD:** I understand. I appreciate that,
17 Your Honor.

18 **THE COURT:** Okay.

19 **MR. SHEPARD:** I just -- I'm having trouble getting my
20 arms around the notion that given that we have a February trial
21 date that we all want to keep, that it takes over a hundred
22 days to get these approvals.

23 I mean, if somebody actually knew that the trial date was
24 important and we are all working for it, I just -- I find it
25 hard to imagine why a hundred days is needed for the approvals.

1 I understand the approvals are needed.

2 **THE COURT:** Well, right. We think the trial is
3 important and it's high on our priority list; but for some of
4 these approving authorities, they may not find it quite as
5 compelling as we do.

6 So, the further up the chain you go, the harder it is
7 for -- I understand that there are complications when you have
8 to get sign-offs from high-level officials. But see what you
9 can do.

10 Tell me and report back if you have got some stipulated
11 proposal for me in the next week.

12 If you don't, then each side can just tell me one final
13 submission -- no more than four pages -- just tell me what your
14 position is, and then I will decide if I'm going to sign this
15 or not. Okay.

16 **MR. WARD:** Thank you, Your Honor.

17 **MR. SHEPARD:** Understood, Your Honor. Thank you.

18 **MR. WARD:** We will do that.

19 **THE COURT:** Anything else? Was this set as a general
20 status conference or just on this issue?

21 **MR. SHEPARD:** I think you had originally --

22 **MR. WARD:** Just --

23 **MR. SHEPARD:** I'm sorry. Go ahead.

24 **MR. WARD:** I believe, Your Honor, it was set for a
25 general status agreement. I think beyond the CIPA filings, we

1 are anticipating and moving towards a February 10th trial.

2 I am sure Mr. Shepard may have issues he wants to raise;
3 but from our perspective, we are working diligently.

4 We have produced an enormous amount of discovery in our
5 view, far beyond what is required, and we continue to try where
6 we can to accommodate the Defendants or -- it hasn't always
7 been successful but we are working on it. And it's the
8 Government's expectation that this case will go to trial on
9 February 10th.

10 **THE COURT:** Okay. Good. All right. Anything else?

11 **MR. SHEPARD:** Should I respond to a couple of those
12 shots that were taken at me?

13 **THE COURT:** Go ahead.

14 **MR. SHEPARD:** First of all, I don't think the
15 Government has really given us far beyond what is required.

16 I would say that we have had to take them kicking and
17 screaming to Judge Beeler on a number of occasions, and Judge
18 Beeler has ruled in our favor on a number of occasions; and
19 that has slowed the discovery process down.

20 Even when the Government says they will produce things, it
21 doesn't really happen. To give you just one example of that,
22 the Government told us on June 7 that it had Abramoff material
23 in boxes that it would make available for us to review. It is
24 a large quantity of material. The index is a hundred pages
25 long. We reached out to them in early July in the hopes of

1 reviewing that material. It's hard copy material. It needs to
2 be reviewed in person. We were hoping to do that when Ms. Dent
3 was out here in July.

4 The Government did not respond for a week until after she
5 had already arrived in San Francisco and said that the
6 documents would not be available until next week at the
7 earliest. That was over three weeks ago. We still have not
8 heard back from the Government on when we are going to be able
9 to review those.

10 And I could go on and on with other examples of this. We
11 asked to meet and confer. Usually the Government just declines
12 to meet and confer with us.

13 And so it's just taking much more time than I would have
14 wanted. We are still working very diligently to be ready on
15 February 10th, but we need some help from the Government to do
16 that.

17 **THE COURT:** Go ahead, Mr. Ward.

18 **MR. WARD:** Well, in terms of the boxes, these are
19 boxes of hard copy materials from a 2005 case involving Jake
20 Abramoff. We have had to have them shipped out here. We will
21 make them available for their review. We will provide them
22 with a schedule. I haven't been able to do it, but we will do
23 that today or tomorrow.

24 We don't believe that any of this is Rule 16 or *Giglio*,
25 but it is -- out of an abundance of caution we are making

1 documents from a 20-year-old case available for them.

2 We have also, as I have said, you know, making significant
3 efforts to meet the Defendants' discovery requests. They often
4 request things that have been produced. We have reproduced
5 them for them when they can't find them or have been produced
6 to former counsel.

7 It seems in the Government's view a somewhat relentless
8 set of discovery demands. To cite one example for the Court,
9 just in 2024, we have received 13 discovery letters from the
10 Defense. They would total together 36 pages and add up to
11 approximately 101 requests.

12 Now, some are repeated. Some are dropped. Some are
13 raised again, but it is a somewhat relentless barrage of
14 discovery requests, many of which we believe are beyond Rule
15 16, *Brady* and *Giglio*.

16 But, nonetheless, we are working to do what we can, and we
17 will continue to do what we can within reason. We will
18 litigate it -- and we have in front of Judge Beeler -- if we
19 feel the requests are beyond our obligations, but we are
20 trying.

21 **THE COURT:** All right. One week from today tell me
22 where things stand on this CIPA issue, and either I -- well,
23 what I would hope to get is some stipulation; but if I don't
24 have a stipulation, then each side no more than four pages as
25 to what you think I ought to do and I will do something. Okay.

1 Very good.

2 **MR. WARD:** Thank you, Your Honor.

3 **THE COURT:** See you later.

4 **MR. SHEPARD:** Thank you, Your Honor.

5 **THE COURT:** Thank you.

6 (Proceedings adjourned at 2:54 p.m.)

7 ---oOo---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: August 12, 2024



Marla F. Knox, CSR No. 14421, RPR, CRR, RMR
United States District Court - Official Reporter